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project may pose serious threats to the Tribe's cultural, historic, economic, and conservation interests.

it appears that very little, if any, additional primary data or information has been collected by Powertech. Similarly, NRC Staff has not required, independently collected, or confirmed the data and information necessary to resolve the serious environmental and cultural issues identified by the Tribe

p. 3 the Final SEIS has failed to address substantial concerns regarding impacts to the Tribe's cultural and historic resources, and the lack of information necessary to determine the hydrogeology and geochemistry of the site. In fact, the NRC Staff's decision to separate the National Historic Preservation Act section 106 consultation from the NEPA process has exacerbated the problems, and effectively relegated cultural and historic resource protection to an afterthought.

any meaningful review of the impacts associated with cultural and historic resources and any mitigation associated with these impacts has been inappropriately and illegally excluded from the NEPA process.

**p. 5 Contention 1A: Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources.**

application and SEIS lacked an adequate description of either the affected environment or the impacts of the project on interested tribes as required by federal law. The Board recognized in LBP-13-09 that these contentions "question the adequacy of the protection of historic and cultural resources" and "the adequacy of the consultation process with interested tribes." LBP-13-09 at 15. These contentions of inadequacy carry over to the FSEIS, despite the NRC Staff's attempts to include additional cultural and historical resource impacts discussion in the FSEIS. archaeological, historical, and traditional cultural resources, and (1B) the failure to involve or consult with all

p. 7 Rather than put together a competent survey that included proper scientific expertise, proper methodology, and the participation of the Tribal representatives, NRC Staff instead simply invited Tribes to visit the site for themselves, making no provision for methodologies or scope. Several Tribes, including the Oglala Sioux Tribe, rejected the terms of the NRC Staff directed survey as improper and insufficient. Instead of resolving these issues, NRC Staff simply charged forward, collecting information from the small selection of Tribes that did participate in the exercise and deemed it sufficient.

The result of this separation is that the NHPA 106 process is still ongoing, despite the finalization of the FSEIS – relegating any analysis, mitigation, or project alternatives that result from that consultation as an afterthought to the NEPA process. Further, regardless of how NRC Staff attempts to discharge its duties under NHPA and NEPA, the fact remains that the FSEIS lacks the required competent, adequate, and scientifically-valid cultural resources inventory – despite having committed to the Tribe and this Board to provide the survey and analysis for public comment and review in a NEPA document prior to finalizing the FSEIS. As a result, the NRC Staff's cultural and historic resources impact analysis violates NEPA.

from Federal Court decision this quote: Muckleshoot Indian Tribe vs USFS  
agency must "[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the [NEPA document].")

Here, the application was initially submitted to the NRC in February of 2009, more than five years ago....

regulations, the harms to the Tribe began accruing immediately upon NRC consideration of the Application in a manner that segregated the Tribe's interdisciplinary, culturally-based consultation on the project from what NRC Staff considers technical and environmental concerns.

The only meaningful relief available in a case as egregious as this is to reissue a draft SEIS for public review and comment once the requisite reviews are completed, so that the analysis, alternatives, and mitigation measures in the NEPA document and public comments on the new draft SEIS, can take these reviews into account.